ITEM 3. LEGAL PROCEEDINGS

Occupational Health and Product Liability Litigation.

At March 4, 1981, the Company was a defendant or co-defendant in approximately 5,800 lawsuits brought by approximately 10,200 plaintiffs in which the plaintiffs allege damage to their health as a result of exposure to asbestos fiber either (i) during manufacturing operations in which asbestos fiber was used as a raw material, or (ii) in the course of handling products containing asbestos.

During 1980, the Company received an average of 222 new cases brought by an average of 387 new plaintiffs per month, which represents a significant increase from the 1979 average of 141 new cases and 196 new plaintiffs per month and the 1978 average of 65 new cases and 83 new plaintiffs per month. Prior to 1980, a total of 502 suits against the Company were disposed of through trial, settlement or other disposition. From January 1, 1980 through December 31, 1980, a total of 402 claims were disposed of, with the Company's share of disposition costs being an average of $23,300 per claim (excluding legal expenses). This average is higher than the Company's historical average of approximately $13,000 per plaintiff for all years prior to 1980, resulting in an increase in the overall average disposition cost per plaintiff through 1980 to approximately $17,500. These disposition costs do not include the results of the *Hogard* case tried in Los Angeles. This is the first shipyard worker case to proceed to trial in Southern California (where there are in excess of 1,700 cases currently pending). The jury awarded the plaintiff $1,200,000 as damages against the Company and one other defendant. Based on post-trial motions, the Court ordered a new trial on damages. This case is now on appeal.

As discussed below, the Company believes that it has substantial defenses to the asbestos/health claims. However, the recent growth in the number of asbestos cases being filed against the Company and the rise in the level of disposition costs, have increased uncertainties concerning the future volume of asbestos cases and associated disposition costs of present and future cases. Because of these uncertainties, the eventual outcome of this litigation cannot be predicted at this time nor can the ultimate liability to the Company, after application of available insurance, be estimated with any degree of reliability. As no reasonable estimate of loss can be made, no liability has been recorded in the financial statements. Depending on the manner and time in which these uncertainties are resolved, the costs to the Company could be substantial. Additionally, as discussed below, the Company is involved in litigation concerning insurance coverage of asbestos/health claims, which as with any litigation, also involves uncertainties.

The plaintiffs in these pending asbestos/health cases typically fall into one of three categories:

(i) Persons who handled finished products manufactured by the Company and, typically, a number of other manufacturers, which contained asbestos and emitted dust when handled;

(ii) Company employees who were exposed to asbestos while working at Company facilities where asbestos fiber was used as a raw material in the production of finished goods; or

(iii) Employees of other companies who were exposed to asbestos fiber which was purchased directly or indirectly from the Company and, typically, a number of other suppliers, and used by such companies to produce finished goods.

The majority of the lawsuits have been brought by plaintiffs in the first category, typically insulation workers and other persons who installed or, for other reasons, intermittently handled or otherwise were exposed to asbestos insulation or other products containing asbestos acquired directly or indirectly from the Company and, in most cases, a number of other suppliers. The majority of plaintiffs in this category were employed as shipyard workers either directly by the Federal Government or by private shipyards under Federal Government contract and control, and were exposed to asbestos fiber in the course of construction, renovation and repair of ships, particularly during World War II. The litigation has disclosed that disease following such shipyard exposure resulted from poor working conditions in the shipyards over which the Company had no control.

This first category of plaintiffs allege that the Company and the other defendants failed in their duty to warn of the possible hazards associated with inhalation of asbestos fiber contained in dust emanating from such products. The Company believes that the preponderance of these asbestos-related injuries originated from exposure to asbestos dust in occupational settings many years ago. During the periods of alleged injurious exposure, medical and scientific authorities, government officials and companies supplying products containing asbestos fiber believed that the dust levels to which asbestos insulation workers and other persons handling asbestos-containing products were exposed did not constitute a hazard to the health of such workers. Accordingly, the Company maintains that there was no basis for product warnings or hazard controls until the results of scientific studies linking pulmonary disease in insulation workers with asbestos exposure were made public in 1964. Thereafter, appropriate warnings were given, including warning labels on packages, instruction booklets and seminars for insulation contractors and, ultimately, asbestos-containing insulation products were discontinued by the Company.

The second category of plaintiffs consists of current and former Company employees who were exposed to asbestos fiber in connection with the Company's asbestos mining, milling or manufacturing operations. With respect to these plaintiffs, it is the Company's position that applicable federal and state workers' compensation statutes provide the exclusive remedy for employment-related injuries. In cases brought by current and former employees of the Company in California, Illinois, Louisiana, New Jersey and Texas, some plaintiffs seek to avoid the limitations of this remedy by suing outside of the applicable workers' compensation statutes. Recently, the California Supreme Court ruled that in California such plaintiffs may, under certain conditions, be entitled to maintain such actions. In that decision, the Court held that in situations where an employee alleges that (1) his employer fraudulently concealed from the employee his diseases or injury and the cause of such disease or injury and (2) such fraud or concealment resulted in aggravation of harm to the employee, then the employee has the right to maintain an action directly against the employer and not be limited to the remedy provided by the applicable workers' compensation statutes. The immediate effect of this decision will be to allow the Company's California employees to maintain actions directly against the Company under these limited conditions. Recovery by the employees will require proof of such fraud and aggravation. The Company believes that it has substantial defenses to such allegations of fraud and aggravation. The Louisiana cases are, in part, predicated upon Louisiana statutes permitting so-called executive liability actions, which have been brought against several past and present employees of the Company. The Company believes it has substantial defenses to these cases. Typically suits in this second category also name, as defendants, subsidiaries of the Company. The right of a Company employee to proceed outside workers' compensation statutes against particular subsidiaries of the Company remains unsettled.

The third category of plaintiffs consists of employees of other companies which used in their manufacturing operations asbestos fiber supplied by Johns-Manville and, in most cases, other suppliers. With respect to these actions, the Company maintains that the companies to which it sold asbestos fiber had the same limited knowledge as the Company of the potentially harmful effects of excessive exposure to asbestos dust, and that, accordingly, the Company had no duty to advise such companies of risks of which they were already aware. Therefore, the Company maintains that the duty, if any, to warn of or protect against any hazards of exposure to airborne dust containing asbestos fiber rested with the plaintiffs' employers. The several actions brought by plaintiffs in this category include suits by approximately 623 former employees of Raybestos-Manhattan, Inc. against the Company and numerous other defendants. This is the largest single group of cases in this category. A conditional settlement of these cases is presently pending in the United States District Court for the District of New Jersey.

It is the Company's belief that the asbestos/health claims and lawsuits pending and which may arise in the future for the most part relate to events and conditions existing in prior years. More specifically, the Company believes, based on the following factors and assumptions, that since at least the beginning of 1978, no significant new potential liabilities have been created for the Company with respect to diseases known to be related to asbestos and arising from asbestos fiber and/or asbestos-containing products manufactured or sold by the Company:

• That since the mid-1970's, the Company has sold asbestos fiber in the United States only in pressure pack, block form or other similar condition and not in a loose form;

• That by 1973, the Company had ceased domestic manufacture of thermal insulation products containing asbestos which are the products principally involved in disease claims made against the Company;

• That the Occupational Safety and Health Administration established a maximum exposure standard for asbestos fiber of 5 fibers per cubic centimeter in 1972 and lowered that standard to 2 fibers per cubic centimeter in 1976. It is assumed that compliance with such standards in the work place was achieved within a reasonable time following such promulgation and is continuing to date; and

• With respect to any use not complying with the OSHA asbestos standards, the Company's defensive posture with respect to claims arising out of such environments will be significantly enhanced.

At March 4, 1981, there were included within the 5,800 cases pending a series of indemnity actions and 11 purported class actions which are described in more detail below.

Indemnity Actions.

In sixty-five cases, former employees of the Company have commenced legal proceedings against a former contract physician of the Company alleging that the physician failed to advise such employees that they had contracted pulmonary disease associated with their exposure to asbestos fiber. In each case, the defendant physician seeks indemnity from the Company against any damages which may be awarded the plaintiffs and, in addition, seeks general damages of $2,000,000 and punitive damages of $10,000,000. Each plaintiff seeks $800,000 in compensatory damages and $1.5 million in punitive damages, for breach of contract, misrepresentation and emotional distress. The physician was an unsuccessful defendant in an earlier case brought by a former employee on the same grounds, in which a judgment of $383.026 was awarded to the plaintiff. The physician is presently seeking indemnification from the Company against the judgment in this case.

There are also two cases pending in which manufacturers of products containing asbestos seek indemnification from the Company for sums paid by these manufacturers in separate cases on the grounds that the Company supplied asbestos which was incorporated into their products. The Company believes it has substantial defenses to these actions.

Purported Class Actions.

The Company is a defendant in 11 purported class actions. Eight of these purported class actions are suits brought by plaintiffs in the second category described above—present and former employees of the Company who during the course of their employment in the Company's facilities were exposed to asbestos fiber. These employee and former-employee cases include:

(i) Six purported class actions brought on behalf of all present and former employees of the Company's Manville, New Jersey plant wherein the plaintiffs in one case each seek $500,000,000 in damages and in the remaining five the plaintiffs seek unspecified general, special and punitive damages;

(ii) An action filed on behalf of all present and former employees of the Company's Pittsburg, California facility wherein the plaintiffs seek damages for each member of the purported class in the amount of $1,000,000 for fraud and $10,000,000 punitive and unspecified general damages; and

(iii) A second action filed on behalf of all present and former employees of the Company's Pittsburg, California plant wherein the plaintiffs each seek unspecified compensatory damages and $10,000,000 in punitive damages.

One of the 11 purported class actions involves the third category of plaintiffs—those who allege injury due to exposure during manufacturing operations to asbestos fiber supplied to their employers by the Company and other defendants. The plaintiffs in this case each seek unspecified compensatory and punitive damages.

The two remaining purported class actions are as follows: (1) an action brought by the residents near the Company's Manville, New Jersey facility seeking unspecified damages allegedly resulting from harmful exposure to asbestos fiber allegedly discharged from the plant into the atmosphere; and (2) an action brought on behalf of Louisiana workers in the boilermaker or insulation trades in the maritime, shipbuilding or repairing industry and seeking $100,000,000 in damages.

Matters Relating to Insurance Coverage.

The Company has maintained over the years various policies of insurance in differing amounts to protect the Company against the cost of liability for product-related personal injury or property damage. In years prior to 1976, the insurance purchased was typically in layers with the Company retaining a small self-insured deductible and purchasing a primary layer of coverage and one or more layers of excess coverage. Subsequent to 1976, for product-related liability, the Company has retained a larger self-insured (deductible) layer.

The correct interpretation of a number of provisions of the various policies of insurance has been a matter of dispute between the Company and its primary and excess insurers and other questions have arisen as to the existence of insurance coverage in the 1934-1948 period. On March 31, 1980, the Company filed a declaratory judgment action in the Superior Court of the State of California for the City and County of San Francisco seeking to have such questions resolved by that court. All of the Company's domestic carriers (both primary and excess) and two of the Company's Canadian primary insurers are presently named as defendants in the California action.

The San Francisco action involves certain issues which are also being litigated in separate proceedings pending in Canada and Massachusetts. The Massachusetts action filed in the United States District Court, concerns the existence of insurance coverage and all of the insurance coverage issues described in the following paragraph for the limited period 1934-48. With respect to coverage of Canadian entities, the California court previously stayed proceedings against one of the Company's Canadian insurers due to the existence of a separate Canadian action brought in Canada by that insurer. However, the court has recently granted a motion to intervene filed by one of the Company's domestic primary carriers and has allowed this carrier to proceed against the previously excluded Canadian carrier.

The principal issues involved in the domestic actions are interpretations as to the kind of property damages insured against, the dates of occurrence of property damage, the dates of occurrence of asbestos-related disease, the satisfaction by the Company of any duty it may have had to disclose to carriers claims for personal injury related to asbestos fiber and asbestos-containing products, and the method of allocation of coverage to the asbestos/health claims.

The Company is in litigation in Canada with one of its primary carriers concerning coverage of its Canadian entities. The issue involved in this suit is limited to the Company's duty to disclose to that carrier any knowledge it may have had with respect to the harmful effects of excessive exposure to asbestos fiber and dust from asbestos-containing products.

A resolution of such issues by the San Francisco court, the court in Canada and the court in Massachusetts will provide the Company and its insurance carriers with an improved ability to assess the impact of the cost of insured events including asbestos-related personal injury claims. While any litigation involves uncertainties the Company believes that its position with respect to these issues is sound and in accord with the weight of judicial precedents.

Securities Litigation

The Company is also a defendant in a purported class action commenced May 4, 1979 by one of its shareholders. The complaint charges violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The plaintiff alleges misrepresentations in, and material omissions from, the Company's published documents with respect to matters relating to the Company's potential liability as a result of asbestos-related health litigation. The class purported to be represented by the plaintiff consists of all persons who bought the Company's common stock between April 1, 1975 and October 15, 1978. The damages claimed are in an unspecified amount representing the loss suffered through purchases of common stock at market prices allegedly inflated by the Company's violations of the securities law, followed by a decline in the market value of the common stock allegedly resulting from disclosure of relevant facts in October, 1978. The Company denies that it has made the alleged misrepresentations and omissions, and believes that it has substantial defenses to these charges.

Antitrust Litigation

As a result of the merger of Olinkraft, Inc. into a subsidiary of Johns-Manville, that subsidiary assumed all of Olinkraft's liabilities including those arising out of then-pending litigation. Most of the litigation to which Olinkraft was a party consists of private antitrust suits which are described below. Effective May 6, 1980, the subsidiary's corporate name was changed to Manville Forest Products Corporation.

In April 1979, Olinkraft received notice that Esprit de Corp had filed a complaint in a state court in California alleging that Olinkraft and other corporations engaged in manufacturing and selling corrugated containers and corrugated sheets had violated the California Business and Professions Code (Cartwright Act) by engaging in price fixing in the sale of corrugated containers and corrugated sheets. The suit purports to be a class action on behalf of indirect purchasers and seeks treble damages.

In March 1977, Olinkraft, along with other manufacturers of corrugated containers, was named as a defendant in an antitrust class action suit filed in the United States District Court for the Northern District of Illinois, Eastern Division, alleging a conspiracy to fix, raise, maintain and stabilize the prices of corrugated containers. The complaint sought treble damages and injunctive relief. This case was transferred to the United States District Court for the Southern District of Texas. Olinkraft was also named as a defendant in numerous additional suits brought by direct purchasers of corrugated containers making similar allegations and seeking similar relief. These cases were also transferred and consolidated in the United States District Court for the Southern District of Texas. On January 19, 1979, Olinkraft entered into an agreement, subject to court approval, to settle with the most significant class of plaintiffs. Final court approval of this settlement was given in 1979, and a judgment of dismissal was entered in January 1980. The approval and judgment of dismissal are currently under appeal. Court approval of a settlement agreement with a subclass of purchasers of corrugated sheets was given in March 1980 which is also under appeal. Several class members have elected not to participate in the settlement and are pursuing approximately 6 private actions against Olinkraft and other container manufacturers.

One nonsettling defendant in the corrugated container antitrust litigation instituted an action in the United States District Court for the District of Minnesota—4th Division, against Olinkraft and other settling defendants, seeking contribution for pro-rata shares of any recovery against the nonsettling defendant in the corrugated container antitrust litigation. This case was transferred to the United States District Court for the Southern District of Texas where contribution was denied. The plaintiff moved the court to reconsider its ruling, and this motion is pending. At trial, the nonsettling defendant was found liable to plaintiffs in the corrugated container litigation, and proceedings are being conducted before the court to ascertain the amount of damages.

On July 10, 1978, Olinkraft was served with a complaint filed in a state court in South Carolina, alleging that Olinkraft and 35 other corporations engaged in price fixing in the sale of corrugated containers in violation of the laws of the state of South Carolina. The suit purports to be on behalf of two classes of purchasers of corrugated containers and seeks judgment against defendants in the sum of $200 million plus interest and reasonable attorneys' fees. The judge in the corrugated container litigation has enjoined the South Carolina plaintiffs from prosecuting corrugated container claims in any court other than the Southern District of Texas. Currently all proceedings are stayed pending appeal of the injunction and approval of the settlement of the corrugated container cases described above.

While the result of any legal proceeding contains elements of uncertainty, it is the present opinion of the Company that the above-described antitrust actions will not have a material adverse effect on the Company's consolidated financial position or results of operations.

ITEM 4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by Item 4 has been omitted from this report pursuant to General Instruction G(1) and Rule 12-b23 as it will be filed with the Commission in the Company's 1981 definitive proxy statement pursuant to Regulation 14A, said proxy statement being expressly incorporated herein by this reference.

PART II

The information required by Part II, Items 5 through 8, has been omitted from this report pursuant to General Instruction G(1) as it is contained in the Company's 1980 Annual Report to Shareholders which Annual Report is expressly incorporated herein by this reference.

PART III

The information required by Part III, Items 9 and 10, has been omitted from this report pursuant to General Instruction G(3) as it will be filed with the Commission in the Company's 1981 definitive proxy statement filed pursuant to Regulation 14A, said proxy statement being expressly incorporated herein by this reference.

PART IV

ITEM 11. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, ~~AND REPORTS ON FORM 8-K.~~

(a) Financial statements, financial statement schedules and exhibits filed in this report.

1. Financial statements and financial statement schedules. See index to consolidated financial statements, supplemental data and schedules on page 29.
2. Exhibits filed.

    I. List of subsidiaries of the registrant.

(b) Reports on Form 8-K.

The Company did not file any reports on Form 8-K during the last quarter of the period covered by this report.